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Attorneys for Defendant THE TRUSTEES
OF THE UNIVERSITY OF
PENNSYLVANIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GENENTECH, INC.,
Plaintiff

v.

THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA,
Defendant and Counterclaimant

Case No. 5:10-cv-02037-LHK (PSG)

**STIPULATED AGREEMENT
RESOLVING GENENTECH'S OCTOBER
11, 2011, MOTION TO COMPEL
REDWELD NOTATION**

Judge: Hon. Paul S. Grewal

STIPULATED AGREEMENT RESOLVING
GENENTECH MOTION OF OCTOBER 11, 2011

WHEREAS, the Trustees of the University of Pennsylvania previously produced for Genentech, Inc.'s inspection a Redweld folder on the outside of which Genentech observed a handwritten inscription now known to have been written by Dr. Makoto Katsumata; and

WHEREAS, the University subsequently asserted the attorney-client privilege and/or work product protection (collectively "privilege" below) over this inscription and requested that Genentech not refer to, cite, or quote this inscription, and delete reference of it from its work product and inspection notes; and

WHEREAS, Genentech contested this assertion of privilege and contended that a waiver of privilege (if applicable) had occurred; and

WHEREAS, on October 11, 2011, Genentech lodged under seal a Letter Brief Motion to Compel with the Court requesting that the Court order the University to produce the Redweld at issue; and

WHEREAS, the Parties have further conferred regarding this dispute and Genentech's motion; and

THE PARTIES NOW THEREFORE AGREE:

- To the extent there was a waiver of any privilege, the Parties agree that the waiver is limited to the statement itself as inscribed by Dr. Katsumata on the outside of the Redweld folder that contained the materials later produced and used as Exhibit 6 at Dr. Katsumata's deposition.

- The University will no longer assert privilege over that inscription;

- The University will produce for inspection the Redweld folder (including its contents), and will permit copying of the inscription;

- The parties consider this dispute to be resolved and request the Court dismiss Genentech's pending October 11, 2011, Letter Brief Motion to Compel as moot. No further relief of any kind should be granted as to this motion. This stipulation is not intended to affect any other pending motion.

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2 SO STIPULATED:
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4 Dated: October 14, 2011

Respectfully submitted,

5 KEKER & VAN NEST LLP
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7 By: /s/ Ashok Ramani

8 Ashok Ramani (#200020)
9 Attorneys for Plaintiff and Counterclaim-
Defendant GENENTECH, INC.

10 Dated: October 14, 2011

Respectfully submitted,

11 IRELL & MANELLA LLP
12

13 By: /s/ Raymond LaMagna

14 Raymond LaMagna (#244821)
15 Attorneys for Defendant and Counterclaimant
16 THE TRUSTEES OF THE UNIVERSITY OF
17 PENNSYLVANIA
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1 PURSUANT TO STIPULATION, IT IS HEREBY BY ORDERED that:

2 • With respect to the subject matter of Genentech's October 11, 2011, Letter Brief
3 Motion to Compel, to the extent there was a waiver of any privilege, it will be deemed stipulated
4 that the waiver is limited to the statement itself as inscribed by Dr. Katsumata on the outside of the
5 Redweld folder that contained the materials later produced and used as Exhibit 6 at
6 Dr. Katsumata's deposition;

7 • The University may no longer assert privilege over that inscription;

8 • The University must produce for inspection the Redweld folder (including its
9 contents), and permit copying of the inscription;

10 • It will be deemed stipulated that the inscription was written by Dr. Katsumata to
11 litigation counsel in this case and the materials contained in the folder were collected by
12 Dr. Katsumata to provide to litigation counsel during the pendency of this case.

13 • Given the parties' agreement, Genentech's Letter Brief Motion to Compel is
14 otherwise dismissed as moot.

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16 IT IS SO ORDERED

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18 Dated: _October 21, 2011

19 By: Paul S. Grewal
20 Honorable Paul S. Grewal
21 United States Magistrate Judge
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